

TITLE 8. INDUSTRIAL RELATIONS
DIVISION 1. DEPARTMENT OF INDUSTRIAL RELATIONS
CHAPTER 4.5. DIVISION OF WORKERS' COMPENSATION
SUBCHAPTER 1. ADMINISTRATIVE DIRECTOR -- ADMINISTRATIVE
RULES

ARTICLE 12

RETURN TO WORK
VOCATIONAL REHABILITATION

10001. Definitions.

As used in this Article:

- (a) “Alternative work” means work (1) offered ~~by the~~ either by the employer who employed the injured worker at the time ~~of~~ of injury, or by another employer where the previous employment was ~~on a seasonal work basis, as a daily hire, or as a project hire,~~ (2) that the employee has the ability to perform, (3) that offers wages and compensation that are at least 85 percent of those paid to the employee at the time of injury, and (4) that is located within a reasonable commuting distance of the employee's residence at the time of injury.
- (b) “Claims Administrator” means a self-administered insurer providing security for the payment of compensation required by Divisions 4 and 4.5 of the Labor Code, a self-administered self-insured employer, a self-administered joint powers authority, a self-administered legally uninsured, or a third-party claims administrator for a self-insured employer, insurer, legally uninsured employer, or joint powers authority.
- (c) “Modified Work” means regular work modified so that the employee has the ability to perform all the functions of the job and that offers wages and compensation that are at least 85 percent of those paid to the employee at the time of injury, and located within a reasonable commuting distance of the employee's residence at the time of injury.
- (d) “Permanent and stationary” means the point in time when the employee has reached maximal medical improvement, meaning his or her condition is well stabilized, and unlikely to change substantially in the next year with or without medical treatment, based on (1) an opinion from a treating physician, AME, or QME; (2) a judicial finding by a Workers’ Compensation Administrative Law Judge, the Workers’ Compensation Appeals Board, or a court; or (3) a stipulation that is approved by a Workers’ Compensation Administrative Law Judge or the Workers’ Compensation Appeals Board.

(e) “Regular Work” means the employee's usual occupation or the position in which the employee was engaged at the time of injury and that offers wages and compensation equivalent to those paid to the employee at the time of injury, and located within a reasonable commuting distance of the employee's residence at the time of injury.

(f) “Seasonal Work” means employment as ~~the employee's usual occupation or the position in which the employee was engaged at the time of injury and that offers wages and compensation equivalent to those paid to the employee at the time of injury in which the employee regularly works as a daily hire, a project hire, or an annual season hire, and is located within a reasonable commuting distance of the employee's residence at the time of injury.~~

Authority: Sections 133, 139.48, and 5307.3, Labor Code.

Reference: Sections 139.48, and 4658.1, Labor Code; *Henry v. WCAB (1998) 68 Cal.App.4th 981.*

10002. Offer of Work; Adjustment of Permanent Disability Payments.

(a) This section shall apply to all injuries occurring on or after January 1, 2005, and to the following employers:

- (1) Insured employers who employed 50 or more employees at the time of the most recent policy inception or renewal date for the insurance policy that was in effect at the time of the employee's injury;
- (2) Self-insured employers who employed 50 or more employees at the time of the most recent filing by the employer of the Self-Insurer's Annual Report that was in effect at the time of the employee's injury; and
- (3) Legally uninsured employers who employed 50 or more employees at the time of injury.

(b) Within 60 calendar days from the date that the condition of an injured employee with permanent partial disability becomes permanent and stationary:

- (1) If an employer does not serve the employee with a notice of offer of regular work, modified work or alternative work for a period of at least 12 months, each payment of permanent partial disability remaining to be paid to the employee from the date of the end of the 60 day period shall be paid in accordance with Labor Code section 4658 (d)(1) and increased by 15 percent.

(2) If an employer serves the employee with a notice of offer of regular work, modified work or alternative work for a period of at least 12 months, and in accordance with the requirements set forth in paragraphs (3) and (4), each payment of permanent partial disability remaining to be paid from the date the offer was served on the employee shall be paid in accordance with Labor Code section 4658 (d)(1) and decreased by 15 percent, regardless of whether the employee accepts or rejects the offer.

(3) The employer shall use Form DWC-AD 10133.53 (Section 10133.53) to offer modified or alternative work, or Form DWC-AD 10003 (Section 10003) to offer regular work. The claims administrator may serve the offer of work on behalf of the employer.

(4) The regular, alternative, or modified work that is offered by the employer pursuant to paragraph (2) shall be located within a reasonable commuting distance of the employee's residence at the time of the injury, unless the employee waives this condition. This condition shall be deemed to be waived if the employee accepts the regular, modified, or alternative work, and does not object to the location within 20 calendar days of being informed of the right to object. The condition shall be conclusively deemed to be satisfied if the offered work is at the same location and the same shift as the employment at the time of injury.

(c) If the claims administrator relies upon a permanent and stationary date contained in a medical report prepared by the employee's treating physician, QME, or AME, but there is subsequently ~~In the event there is~~ a dispute as to an employee's permanent and stationary status, and there has been a notice of offer of work served on the employee in accordance with subdivision (b), the claims administrator may withhold 15% from each payment of permanent partial disability remaining to be paid from the date the notice of offer was served on the employee until there has been a final judicial determination of the date that the employee is permanent and stationary pursuant to Labor Code section 4062.

(1) Where there is a final judicial determination that the employee is permanent and stationary on a date later than the date relied on by the employer in making its offer of work, the employee shall be reimbursed any amount withheld up to the date a new notice of offer of work is served on the employee pursuant to subdivision (b).

(2) Where there is a final judicial determination that the employee is not permanent and stationary, the employee shall be reimbursed any amount withheld up to the date of the determination.

(3) The claims administrator is not required to reimburse permanent partial disability benefit payments that have been withheld pursuant to this subdivision during any period for which the employee is entitled to temporary disability benefit payments.

(d) If the employee's regular work, modified work, or alternative work that has been offered by the employer pursuant to paragraph (1) of subdivision (b) and has been accepted by the employee, is terminated prior to the end of the period for which permanent partial disability benefits are due, the amount of each remaining permanent partial disability payment from the date of the termination shall be paid in accordance with Labor Code section 4658 (d) (1), as though no decrease in payments had been imposed, and increased by 15 percent. An employee who voluntarily terminates his or her regular work, modified work, or alternative work shall not be eligible for the 15 percent increase in permanent partial disability payments pursuant to this subdivision.

(e) Nothing in this section shall prevent the parties from settling or agreeing to commute the permanent disability benefits to which an employee may be entitled. However, if the permanent disability benefits are commuted by a Workers' Compensation Administrative Law Judge or the Workers' Compensation Appeals Board pursuant to Labor Code section 5100, the commuted sum shall account for any adjustment that would have been required by this section if payment had been made pursuant to Labor Code section 4658.

(f) When the employer offers regular, modified or alternative work to the employee that meets the conditions of this section and subsequently learns that the employee cannot lawfully perform regular, modified or alternative work ~~due to the employee's immigration status~~, the employer is not required to provide the regular, modified or alternative work.

(g) If the employer offers regular, modified, or alternative *seasonal* work to the employee, the offer shall meet the following requirements:

(1) the employee was hired for ~~on a seasonal work basis, as a daily hire, or as a project hire~~ prior to injury;

(2) the offer of regular, modified or alternative *seasonal* work is ~~on a similar seasonal basis of reasonably similar wages, hours and working conditions to the employee's previous employment, and where the previous employment was for seasonal work on a seasonal basis, as a daily hire, or as a project hire, the one year requirement may be satisfied by cumulative periods of seasonal work;~~

(3) the work must commence within 12 months of the date of the offer; and

~~(3)~~ (4) The offer meets the conditions set forth in this section.

Authority: Sections 133, 139.48, and 5307.3, Labor Code.

Reference: Sections 139.48, and 4658, Labor Code, Del Taco v. WCAB (2000) 79 Cal.App.4th 1437, Anzelde v. WCAB (1996) 61 Cal. Comp. Cases 1458 (Writ denied), and Henry v. WCAB (1998) 68 Cal.App.4th 981.

10003. Form [DWC AD 10003 Notice of Offer of Work].

DWC-AD 10003 NOTICE OF OFFER OF REGULAR WORK
For injuries occurring on or after 1/1/05

THIS SECTION TO BE COMPLETED BY EMPLOYER OR CLAIMS ADMINISTRATOR:

Claims Administrator: _____ Claim Number: _____
(Name of Claims Administrator)

Based on the opinion of _____ treating physician _____ QME _____ AME _____, you are able to return to the
(Name of Physician)

usual occupation or position you held at the time of your injury on _____ (Date).

Date you are eligible to return to job: _____ (as stated in the above physician's report)

Employer : _____
(Name of Firm)

Job Title: _____

Starting Date: _____

_____ This position is at the same location and shift as your pre-injury position.

_____ This position is at a different location than your pre-injury position, as follows :

_____ This position is for a different shift than your pre-injury position, as follows:

_____ (start time) _____ (end time)

You may contact _____ concerning this position. Phone No.: _____
(Name of Contact Person)

This position is expected to last ~~for a total of~~ for at least 12 months of work. If this position does not last for a total of at least 12 months of work, you may be entitled to an increase in your permanent disability benefit payments.

This position provides wages and compensation of \$ _____, that are no less than equivalent ~~to~~ the wages and compensation paid to you at the time of your injury.

I, _____ (Name of Claims Administrator), have obtained the above ~~verified with the employer the facts concerning this job offer~~ information from your employer.

If the job offered is at a different location than the job you held at the time of your injury, and you believe the commuting distance to this job from the residence where you lived at the time of your injury is not reasonable, you may object to the job offer as not being within a reasonable commuting distance. You may also waive this commuting distance requirement. You will be considered to have waived this requirement if you accept the above offer of work or do not reject the offer within twenty calendar days of receipt of this notice.

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THIS SECTION TO BE COMPLETED BY EMPLOYEE:

Claim Number _____

Name of employee: _____ Date offer received: _____

I understand that whether I accept or reject this offer, my remaining permanent disability payments may be decreased by 15%.

Offer of Regular Work at Same Location and/or Shift

___ I accept this offer of regular work.

___ I reject this offer of work. Reason: _____

Offer of Regular Work at a Different Location and/or Shift

I understand that I have the right to object to a work offer when the location or shift is different than what I had at the time of my injury.

___ I accept the offer and waive my right to object to the job location as not being within a reasonable commuting distance from the residence where I lived at the time of my injury.

___ **I object to this offer because the job shift or job location that has been offered is different than the job shift or job location I held at the time of my injury, and I do not believe this job allows a reasonable commute from my residence.** I understand if the claims administrator does not agree with this objection, my remaining permanent disability weekly benefit payment may be decreased by 15%.

Date: _____

Signature

If either party has a dispute regarding the offer of regular work, that party may file a Declaration of Readiness with the local district office of the Workers' Compensation Appeals Board (WCAB).

Proof of Service By Mail

I am a citizen of the United States and a resident of the County of _____. I am over the age of eighteen years and not a party to the within matter. My business address is:

_____.

On _____, I served the **Notice of Offer of Regular Work** on the parties listed below by placing a true copy thereof enclosed in a sealed envelope with postage fully prepaid, and thereafter deposited in the U. S. Mail at the place so addressed.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at

_____ on _____.

Signature: _____

Copies Served On:

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Authority: Sections 133, 139.48, and 5307.3, Labor Code.

Reference: Sections 139.48, and 4658, Labor Code.